MK Samy a/l Madasamy (suing as public officer for Sri Veeramakaliammandevasthanam) v Koperasi Serbaguna Sungai Gelugor Bhd (previously known as Sykt Berkerjasama-sama Serbaguna Sungei Gelugor Dengan Tanggongan Bhd) & Ors

HIGH COURT (PENANG) — CIVIL SUIT NO 22NCVC-111–07 OF 2014
ABDUL WAHAB JC
26 JANUARY 2018

Land Law — Title — Transfer — Sell and transfer of land on which temple stood — Purchase of plots — Agreement to transfer plot of land to trustees of temple — Title of land collected and handed over to temple — Notice demanding delivery of title to plot to temple — Failure/neglect to comply with demand — Claim for order to deliver title and for declarations that claimant was purchaser of two plots of land and for execution of transfers of said lots to trustees of temple

Around 1980, the first defendant agreed to sell and transfer a plot of land on which a temple stood. It was duly transferred and registered under the name of the trustees of the temple in 1999. When the temple offered to buy, two pieces of lands, namely Plots 43 and 44, the first defendant informed the plaintiff, that both plots had been allotted to their Indian members and advised the plaintiff to purchase the plots from them. The plaintiff contacted the said members and one Marimuthu agreed to sell Plot 43 to the plaintiff for a consideration of RM15,000 and a right to purchase a flat in the proposed construction of a block of flats by the first defendant on Plot 516 without balloting ('the sale and purchase agreement'). One Papamah agreed to sell her Plot 44 in exchange for a flat on the first floor of the said block of flats. The temple then approached and negotiated with the first defendant, who agreed to sell two flats, one each to Marimuthu and Papamah. Accordingly, an agreement was executed between the plaintiff and the first defendant. The temple had taken possession of Plots 43 and 44 and had rebuilt the temple on Plots 514, 43 and 44. The building plan had been signed by the first defendant, as owner of all three plots at that time. The plaintiff sought to transfer titles of Plot 43 and 44 to the temple and upon inquiry, the first defendant informed the plaintiff's that the said plots must first be transferred to their respective members, and only after that could they be transferred to a third owner ie the temple. Subsequently, the third defendant agreed to the transfer of Plot 44 to the trustees of the temple and had collected the title from the first defendant and handed it over to the temple. In 2010, SP1, together with three committee members called upon the second defendant at his house, to ask him for the title

to Plot 43. The second defendant informed them, that the first defendant had released the title to him, and that he would hand it over to the temple at the right time. The plaintiff sent a notice to the second defendant, demanding that he deliver the title to Plot 43 to the temple, but he failed and neglected to comply with the said demand. The plaintiff filed this claim for an order against the second defendant to deliver the title to the plaintiff and for declarations that the plaintiff was the purchaser of the two plots and for the first defendant to execute transfers of the said lots to the trustees of the temple.

Held, ordering and declaring accordingly:

(1) The overwhelming evidences adduced and, particularly the minutes of the temple meetings, gave strength to the plaintiff's case that the temple had negotiated with the first defendant and that the unit of flat No 4–6 was in fact the unit which had been successfully negotiated and secured by the temple to be offered for purchase by Marimuthu as expressly stated in the memorandum of agreement. The said offer was made by UDA on behalf of the first defendant and UDA merely issued a letter to confirm the success of the second defendant in obtaining the offer to purchase the said unit (see para 54).

(2) The plaintiff had not breached the sale and purchase agreement. The plaintiff had fulfilled its obligation under the agreement and was entitled to the transfer of title of Plot 43. The plaintiff was not required to make the payment of balance purchase price of RM8,000 until the title to the said plot had been transferred to the temple which was not the case here. Here was a valid and binding agreement between the temple and Marimuthu (see paras 55 & 58).

(3) The temple, having fulfilled its obligation under the agreement and having remained in possession of Plot 43 under the agreement which entitled it to be there, was the equitable owner of the said plot under the agreement binding on the vendor ie Marimuthu and/or her family. The second defendant could not now come to court and object the plaintiff's claim for the title to be transferred to the plaintiff unless he could show that he had not acquiesced in the temple's act of possession or that the purchaser had abandoned the agreement (see para 61).

(4) The second defendant therefore, became, in equity, the trustee for the plaintiff of the Plot 43 subject to the second defendant's right to the purchase money entitled. Based on the facts and circumstances of the present case and the evidence adduced, based on the balance of probabilities, the temple had made the initial payment of RM7,000 and RM1,611 towards the sale and purchase of Plot 43 (see para 67).

(5) The plaintiff claimed that RM5,001 was deducted from the balance purchase price for the purpose of donation to the temple as instructed by

Marimuthu and that a sum of RM102 was further deducted for payment of poojas conducted for the second defendant's family member at the temple and that such information was recorded in a memo as adduced before this court. The memo was a handwritten memo prepared by SP1 without any sort of acknowledgment by Marimuthu and/or her family to acknowledge the same. There was no evidence to show any acknowledgement and/or confirmation by Marimuthu and/or her family in respect of the donation and the pooja payment (see paras 69–70).

(6) Evidences adduced before this court were insufficient to prove that Marimuthu and/or her family had made any such donation and/or pooja payment to the temple out of the balance purchase monies. Failure by Marimuthu, during her lifetime, and/or her family to request for the balance purchase price did not dispense with the plaintiff's duty to perform its obligation under the sale and purchase agreement. The second defendant was entitled to the balance purchase money amounting to RM6,389 to be paid by the plaintiff to the second defendant (see paras 70–71).

[Bahasa Malaysia summary

Sekitar tahun 1980, defendan pertama bersetuju untuk menjual dan memindah milik sebidang tanah di mana terdirinya sebuah kuil. Ia telah dipindah milik dan didaftarkan di bawah nama pemegang amanah kuil pada tahun 1999. Apabila kuil menawarkan untuk membeli dua bidang tanah, iaitu Plot 43 dan 44, defendan pertama memaklumkan plaintif, bahawa kedua-dua plot telah diperuntukkan buat ahli India mereka dan menasihatkan plaintif untuk membeli plot tersebut daripada mereka. Plaintif menghubungi ahli-ahli tersebut dan seorang bernama Marimuthu bersetuju menjual Plot 43 kepada plaintif untuk balasan RM15,000 dan hak untuk membeli flat dalam cadangan pembinaan blok rumah oleh defendan pertama di Plot 516 tanpa mengundi ('perjanjian jual beli'). Seorang bernama Papamah bersetuju menjual Plot 44 sebagai ganti flat di tingkat pertama blok flat tersebut. Kuil tersebut kemudian mendekati dan berunding dengan defendan pertama, yang bersetuju untuk menjual dua rumah flat, satu kepada Marimuthu dan satu kepada Papamah. Sehubungan itu, perjanjian telah dilaksanakan antara plaintif dan defendan pertama. Kuil telah mengambil alih Plot 43 dan 44 dan telah membina kuil di Plot 514, 43 dan 44. Pelan bangunan itu ditandatangani oleh defendan pertama, sebagai pemilik kesemua tiga plot pada masa itu. Plaintif memohon untuk memindahkan hak milik Plot 43 dan 44 ke kuil dan melalui siasatan, defendan pertama memaklumkan plaintif bahawa plot tersebut hendaklah terlebih dahulu dipindah milik kepada ahli masing-masing, dan hanya selepas itu kesemuanya boleh dipindahkan kepada pemilik ketiga iaitu kuil. Seterusnya, defendan ketiga bersetuju memindahkan Plot 44 kepada pemegang amanah kuil itu dan telah mengambil hak milik daripada defendan pertama dan menyerahkannya kepada kuil. Pada tahun 2010, SP1,

bersama-sama dengan tiga orang ahli jawatankuasa, memanggil defendan kedua di rumahnya, meminta hak milik Plot 43. Defendan kedua memberitahu mereka, bahawa defendan pertama telah mengeluarkan hak milik kepadanya, dan bahawa dia akan menyerahkannya kepada kuil pada masa yang sesuai. Plaintif menghantar notis kepada defendan kedua, menuntut agar dia menyerahkan hak milik Plot 43 kepada kuil, tetapi dia gagal dan tidak mematuhi permintaan tersebut. Plaintif memfailkan tuntutan ini untuk suatu perintah terhadap defendan kedua untuk menyerahkan hak milik kepada plaintif dan bagi pengisytiharan bahawa plaintif adalah pembeli kedua-dua plot dan bagi defendan pertama untuk melaksanakan pemindahan lot tersebut kepada pemegang amanah kuil.

Diputuskan, memerintahkan dan mengisytiharkan sewajarnya:

(1) Banyak keterangan yang dikemukakan dan, khususnya minit-minit mesyuarat kuil, menyokong kuat kes plaintif bahawa kuil telah berunding dengan defendan pertama dan bahawa unit flat No 4–6 adalah, sebenarnya unit, yang telah berjaya dirundingkan dan diambil oleh kuil yang akan ditawarkan untuk pembelian oleh Marimuthu seperti dinyatakan secara nyata dalam memorandum perjanjian. Tawaran tersebut dibuat oleh UDA bagi pihak defendan pertama dan UDA hanya mengeluarkan surat untuk mengesahkan kejayaan defendan kedua mendapatkan tawaran untuk membeli unit tersebut (lihat perenggan 54).

(2) Plaintif tidak melanggar perjanjian jual beli. Plaintif telah memenuhi kewajipannya di bawah perjanjian dan berhak memindahkan hak milik Plot 43. Plaintif tidak dikehendaki membuat pembayaran harga belian sebanyak RM8,000 sehingga hak milik plot tersebut telah dipindahkan ke kuil yang mana tidak berlaku. Ini adalah perjanjian yang sah dan mengikat antara kuil dan Marimuthu (lihat perenggan 55 & 58).

(3) Kuil, setelah memenuhi kewajipannya bawah perjanjian dan setelah memiliki Plot 43 bawah perjanjian yang melayakkannya di sana, adalah pemilik tanah yang sama bawah perjanjian yang mengikat penjual iaitu Marimuthu dan/atau keluarganya. Defendan kedua tidak boleh hadir ke mahkamah dan menentang tuntutan plaintif agar hak milik dipindahkan kepada plaintif melainkan jika dia dapat menunjukkan bahawa dia tidak bersetuju dengan tindakan milikan kuil atau bahawa pembeli telah mengabaikan perjanjian itu. Oleh itu, defendan kedua, menjadi, dalam ekuiti, pemegang amanah bagi plaintif untuk Plot 43 tertakluk pada hak defendan kedua terhadap haknya atas wang belian. Berdasarkan fakta dan keadaan kes ini dan keterangan yang dikemukakan, berdasarkan imbangan kebarangkalian, kuil telah membuat bayaran awal sebanyak RM7,000 dan RM1,611 bagi jualan dan belian Plot 43 (lihat perenggan 61).

(4) Plaintif mendakwa bahawa RM5,001 ditolak daripada harga belian untuk tujuan sumbangan ke kuil seperti yang diarahkan oleh Marimuthu dan sejumlah RM102 ditolak lagi untuk bayaran 'poojas' yang dilakukan untuk ahli keluarga defendan kedua di kuil dan maklumat tersebut direkodkan dalam memo seperti yang dikemukakan di hadapan mahkamah ini. Memo tersebut adalah memo tulisan tangan yang disediakan oleh SP1 tanpa apa-apa pengakuan oleh Marimuthu dan/atau keluarganya untuk mengakui hal yang sama. Tiada bukti menunjukkan sebarang pengakuan dan/atau pengesahan oleh Marimuthu dan/atau keluarganya berkenaan dengan sumbangan dan bayaran pooja (lihat perenggan 67).

(5) Plaintif mendakwa bahawa RM5,001 ditolak daripada harga belian untuk tujuan sumbangan ke kuil seperti yang diarahkan oleh Marimuthu dan sejumlah RM102 ditolak lagi untuk bayaran 'poojas' yang dilakukan untuk ahli keluarga defendan kedua di kuil dan maklumat tersebut direkodkan dalam memo seperti yang dikemukakan di hadapan mahkamah ini. Memo tersebut adalah memo tulisan tangan yang disediakan oleh SP1 tanpa apa-apa pengakuan oleh Marimuthu dan/atau keluarganya untuk mengakui hal yang sama. Tiada bukti menunjukkan sebarang pengakuan dan/atau pengesahan oleh Marimuthu dan/atau keluarganya berkenaan dengan sumbangan dan bayaran pooja (lihat perenggan 69–70).

(6) Keterangan-keterangan yang dikemukakan di hadapan mahkamah ini tidak mencukupi untuk membuktikan bahawa Marimuthu dan/atau keluarganya telah melakukan apa-apa sumbangan dan/atau bayaran pooja kepada kuil daripada baki wang belian. Kegagalan oleh Marimuthu, semasa hayatnya, dan/atau keluarganya untuk meminta harga belian tidak membebaskan kewajipan plaintif untuk melaksanakan kewajipannya bawah perjanjian jual beli. Defendan kedua berhak mendapat baki wang belian berjumlah RM6,389 yang akan dibayar oleh plaintif kepada defendan kedua (lihat perenggan 70–71).]

Notes

For cases on title in general, see 8(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5787–5804.

Cases referred to

Davies v Taylor [1974] AC 207, HL (refd)

S-B (Children) (Care Proceedings: Standard of Proof), In re [2010] 1 AC 678, SC (refd)

Lau Sieng Nguong v Hap Shing Co Ltd [1969] 1 MLJ 190; [1969] 1 LNS 80, FC (refd)

Lysaght v Edwards (1876) 2 Ch D 499, Ch D (folld)
Munah v Fatimah [1968] 1 MLJ 54; [1967] 1 LNS 108 (refd)
Nasri v Mesah [1971] 1 MLJ 32, FC (refd)
Padang Serai Kilang Kayu Bhd v Khor Kia Fong & Ors [1998] 1 MLJ 589; [1997] 5 CLJ 428, HC (refd)
Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors [1974] 2 MLJ 45; [1974] 1 LNS 175, FC (folld)
Williams v Greatrex [1956] 3 All ER 705, CA (refd)

Legislation referred to

Co-operative Societies Act 1993
Limitation Act 1953 ss 6(1)(a), 9(1)
National Land Code Form 14A
Societies Act 1966

P Nava (V Ari with him) (Nava & Assoc) for the plaintiff.
Amir Abu Bakar (Lee Hean Cheng & Co) for the first defendant.
K Kumar (Lee Hean Cheng & Co) for the second defendant.

Abdul Wahab JC:

INTRODUCTION

[1] The plaintiff is the public officer of the Sri Veerama Kaliamman Devasthanam in Sungai Gelugor, Penang. It is a society registered under the Societies Act 1966 ('the temple').

[2] The first defendant is a co-operative society registered under the Co-operative Societies Act 1993 and is the registered proprietor of Geran No 26724, Lot No 6045 ('Plot 43'), Mukim 13, Daerah Timur Laut, Pulau Pinang and also Geran No 26725, Lot No 6044 ('Plot 44'), Mukim 13, Dearah Timur Laut Pulau Pinang, the said plots being the subject matter of the claim herein.

[3] The second defendant is the son of Marimuthu a/p Murugaya, deceased ('Marimuthu'). During her lifetime, Marimuthu was a member of the first defendant and Plot 43 was allotted to her. After the demise of Marimuthu, the second defendant was substituted as member of the first defendant in place of his mother.

[4] The third defendant is the daughter of Papamah a/p P Krishnan, deceased ('Papamah'). During her lifetime, Papamah was also a member of the first defendant and Plot 44 measuring approximately 3,200 sqft was allotted to

her. The third defendant has, since the death of Papamah, been substituted as a member of the first defendant in place of her mother. A

BACKGROUND FACTS

[5] In or about 1980, the first defendant had agreed to sell and transfer Plot 514 (now Lot No 6071) on which the temple stood to the plaintiff. It was transferred and registered in the name of the trustees of the temple on 10 November 1999. At that time, the temple's administration office and kitchen were at rear of the temple (outside Plot 514) and were partly situated on Plots 43 and 44, and the first defendant requested the temple to demolish them, as they were obstructing their development scheme. B C

[6] When the temple offered to buy Plots 43 and 44, the first defendant informed the plaintiff, that both plots had been allotted to their Indian members and advised the plaintiff to purchase the plots from them. The plaintiff contacted the said members and Marimuthu had agreed to sell Plot 43 to the plaintiff for a consideration of RM15,000 and a right to purchase a flat in the proposed construction of a block of flats by the first defendant on Plot 516 without balloting ('sale and purchase agreement'). Papamah agreed to sell her Plot 44 in exchange for a flat on the first floor of the said block of flats. D E

[7] The temple had then approached and negotiated with the first defendant, who then agreed to sell two flats, one each to Marimuthu and Papamah. Accordingly, an agreement dated 25 July 1980 was executed between the plaintiff and the first defendant. F

[8] Pursuant to the first defendant's consent to make available two flats in their development of a block of flats, SP1 had informed Marimuthu's husband to contact the first defendant about it. Pursuant thereto, Marimuthu had, on 28 November 1979, registered with Perbadanan Pembangunan Bandar (Urban Development Authority) ('UDA') for a unit in the block of flats to be developed by the first defendant. G

[9] The plaintiff had paid Marimuthu a sum of RM7,000 towards the purchase price of Plot 43. The temple paid a further sum of RM1,611 to the first defendant in respect of the balance outstandingon the purchase price for Plot 43 payable by Marimuthu. The plaintiff claimed that Marimuthu and her husband had decided to make a donation of RM5,001 to the temple from the balance purchase price of RM8,000 and that a further sum of RM102 was deducted from the balance purchase price for poojas conducted at the temple for a member of the second defendant's family, namely Gobalakrishnan. H I

[10] For the flat purchased by the temple for Papamah, the temple had paid the full purchase price of RM25,500 to the first defendant and when completed, Papamah took possession of the flat.

[11] On or about 12 April 1980, both Marimuthu and Papamah notified the first defendant that they had sold/transferred Plots 43 and 44 respectively to the plaintiff and authorised the first defendant to register the plaintiff as owner of the said plots.

[12] By letter dated 2 July 1980, UDA informed Marimuthu that she had been successful in her application, and that a Rumah Pangsa unit 4–6 on the fourth defendant floor had been allotted to her, by balloting held on 20 June 1980. Some terms and conditions were set-out in the said letter and she was required to accept the offer, which she did.

[13] By a similar letter dated 2 July 1980, UDA informed Papamah that she too had been successful in her application, and that a Rumah Pangsa unit No 1–4 on the first floor had been allotted to her, by balloting held on 20 June 1980. Similar terms and conditions were set-out in the said letter, and she was required to accept the offer, which she also did.

[14] Since 1980, the temple had taken possession of Plots 43 and 44 and had rebuilt the temple on Plots 514, 43 and 44. The building plan had been signed by the first defendant, as owner of all three plots at that time. The temple had been in occupation of the said plots since completion and issuance of the partial occupation certificate dated 7 July 1984 and the full occupation certificate was issued on 3 September 1999.

[15] The plaintiff sought to transfer titles of Plots 43 and 44 to the temple and upon inquiry by the plaintiff's solicitors, the first defendant had by a letter dated 17 April 2006 informed the plaintiff's solicitors that the said plots must first be transferred to their respective members, and only thereafter could they be transferred to a third owner ie the temple.

[16] Subsequently, the third defendant had agreed to the transfer of Plot 44 to the trustees of the temple and had collected the title from the first defendant and handed it over to the temple.

[17] On or about 27 September 2010, SP1, together with three committee members called upon the second defendant at his house, to ask him for the title to Plot 43. The second defendant informed them, that the first defendant had released the title to him, and that he would hand it over to the temple at the

right time. He also informed them that he would abide by the promise made by his parents, who had sold Plot 43 to the temple.

[18] By notice dated 5 July 2013, the plaintiff's solicitors wrote to the second defendant, demanding that he deliver the title to Lot 6045 (Plot 43) to the temple, but he has failed and neglected to comply with the said demand. The plaintiff had therefore made this claim for an order against the second defendant to deliver the title to the plaintiff and for declarations that the plaintiff is the purchaser of the two plots and for the first defendant to execute transfers of the said lots to the trustees of the temple.

THE PLAINTIFF'S SUBMISSION

[19] On the first day of the hearing ie on 30 March 2017, counsel for the third defendant Mr Raveentharen, had informed the court that his client is not defending the case against her, and a letter dated 16 March 2016 had been written to that effect. Counsel for the third defendant had also informed the court that his client had handed over the title to Plot 44 (now Geran No 26725, Lot No 6044, Mukim 13, Daerah Timur Laut, Pulau Pinang) to the plaintiff long ago. The said counsel also asked for cost and it was agreed at RM2,000. It was thus the plaintiff's submission that there is no issue involving the claim against the third defendant in respect of Plot 44.

[20] The plaintiff submitted that it was never disclosed to the temple in 1980, when the first defendant assisted the plaintiff to purchase the said plots from Marimuthu and Papamah, that the said plot must first be transferred to their respective members, and only thereafter could they be transferred to a third owner ie the plaintiff. The plaintiff therefore contends that the first defendant is barred by acquiescence and is also stopped from contending that the said plots must first be transferred to its members, before transferring them to the temple.

[21] The plaintiff submitted that there was a balance sum of RM1,287 due to the estate of Marimuthu, but the representatives of her estate did not claim the said sum from the temple and that any claim for the said sum is barred by limitation under s 6(1)(a) of the Limitation Act 1953.

[22] It was also the plaintiff's submission that since the temple had taken possession of Plot 43 and built upon it, the plaintiff is thus the equitable owner of the said plot.

THE FIRST DEFENDANT'S SUBMISSION

[23] The first defendant submitted that the first defendant's management in late 1990s and early 2000 onwards were under the impression that Plots 43 and 44 must be transferred to the original owners of the said plots, and then only could they be transferred to the temple's trustees. As such the first defendant had requested the plaintiff to contact the second defendant in respect of the transfer of Plot 43 vide letter dated 31 January 2001 due to the fact that the first defendant does not have the title to Plot 43 in its possession. The first defendant's records show that it was collected by the second defendant on 18 July 2001.

[24] It was the first defendant's case that, according to its standard rules and procedures, Plots 43 and 44 must first be transferred to their respective member and the members and only thereafter could the said plots be transferred to a third owner ie the plaintiff in this case. The first defendant had submitted that, in the absence of any court's order and/or direction, it shall abide to the rules and procedures governing it.

THE SECOND DEFENDANT'S SUBMISSION

[25] The second defendant submitted that there was a failure and/or breach in considerations by the temple on the ground that the temple had failed to procure the right to purchase the flat unit without balloting and that the agreed monetary consideration of RM15,000 was yet to be settled in full by the temple. It was the second defendant's case that the flat unit 4–6 was allocated to Marimuthu upon her being successful in the balloting process that she had registered for.

[26] It was also the second defendant's claim that the sale and purchase agreement between the temple and Marimuthu had been rescinded by the second defendant and that it was agreed between parties that the RM7,000 payment made by the temple to Marimuthu is to be returned on a goodwill basis by way of instalments. The second defendant contended that the temple had accepted the said rescission and had received the first repayment/instalment of RM100 for the purpose of the said rescission.

[27] It was the second defendant's further contention that the plaintiff's action being an action for recovery of land is time barred by virtue of both provisions under the Limitation Act 1953 and the doctrine of laches for inordinate delay in bringing the action and/or claim.

ISSUES TO BE TRIED

[28] Before I proceed to ascertain the issues to be determined in this present case, it would be convenient for me to specify the pertinent facts as follows:

(a) it was not disputed between parties that there was an agreement between the plaintiff and the late Marimuthu for the sale and purchase of Plot 43;

(b) that the sum of RM7,000 had been received by Marimuthu from the plaintiff as initial payment towards the purchase of Plot 43; and

(c) subsequent to the said agreement, the plaintiff had since 1980 took possession of Plot 43 and had to date remained in occupation of the said plot.

[29] In my view, issues arose for the determination of this court as follows:

(a) whether the plaintiff's claim is barred by limitation and/or doctrine of laches;

(b) whether there was a breach of the sale and purchase agreement between the temple and Marimuthu; and

(c) whether the agreement for the sale and purchase of Plot 43 between the plaintiff and Marimuthu has since then been rescinded by any of the parties.

ISSUE OF LIMITATION AND/OR DOCTRINE OF LACHES

[30] The second defendant had alleged that the plaintiff's claim is time barred pursuant to s 9(1) of the Limitation Act 1953 which provides as follows:

> 9 Limitation of actions to recover land
>
> (1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him, or if it first accrued to some person through whom he claims, to that person.

[31] According to the Federal Court in the case of *Nasri v Mesah* [1971] 1 MLJ 32, time begins to run for the purposes of limitation from the date of any infringement or threat of infringement of the appellant's right under the agreement. And that a cause of action on a contract accrues on the date of breach and in the case of actions founded on contract, time runs from the breach. Gill FJ delivering the judgment of the Federal Court had this to say at p 34 of the report:

> A 'cause of action' is the entire set of facts that gives rise to an enforceable claim; the

A phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment (per Lord Esher MR in *Read v Brown* (1888) 22 QBD 128 at p 131). In *Reeves v Butcher* [1891] 2 QB 509 at p 511, Lindley LJ said: 'This expression, 'cause of action', has been repeatedly the subject of decision, and it has been held, particularly in *Hemp v Garland* LR 4 QB 519, decided in 1843, that the B cause of action arises at the time when the debt could first have been recovered by action. The right to bring an action may arise on various events; but it has always been held that the statute runs from the earliest time at which an action could be brought'. In *Board of trade appellants; And Cayzer, Irvine and Company, Limited respondents* [1927] AC 610 at p 617, Viscount Dunedin described 'cause of action' as that which makes action possible. Now, what makes possible an action founded C on a contract is its breach. In other words, a cause of action founded on a contract accrues on the date of its breach. Similarly, the right to sue on a contract accrues on its breach. In the case of actions founded on contract, therefore, time runs from breach (per Field J in *Gibbs v Guild* (1881) 8 QBD 296 at p 302). In the case of actions founded on any other right, time runs from the date on which that right is D infringed or there is a threat of its infringement (see *Bolo v Koklan* (1929–30) 57 IA 325). It would seem clear, therefore, that the expressions 'the right to sue accrues', 'the cause of action accrues' and 'the right of action accrues' mean one and the same thing when one speaks of the time from which the period of limitation as prescribed by law should run. For the reasons I have stated, the period of limitation in the present case can be said to have begun to run only from the first clear and E unequivocal threat to the plaintiff's right to a transfer of the land.

[32] Cause of action arising from a contract here means circumstances where a party in a contract obtains the rights and grounds to institute legal action F against the other party who has defaulted the terms and conditions of the contract. For the cause of action to occur, there must have been breach of the contractual duty. Cause of action also means 'a right to sue'. There cannot be 'right to sue' until and unless there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that the right of the defendant against whom the suit is instituted (see *Padang Serai* G *Kilang Kayu Bhd v Khor Kia Fong & Ors* [1998] 1 MLJ 589; [1997] 5 CLJ 428).

[33] It is the second defendant's contention that the plaintiff on numerous H occasions concluded and/or had reasonable grounds to conclude that the sale and purchase agreement had been rescinded by the second defendant and/or his family and hence the right of action had accrued against the second defendant immediately thereafter.

I **[34]** The first occasion being the temple annual general meeting on 9 April 1990 where the second defendant claimed to have raised the issue of the temple's failure to fulfil the agreed considerations under the sale and purchase

agreement which had led to rescission of the sale and purchase transaction by the second defendant's family. It was the second defendant's further contention that the second defendant's family had agreed to return the RM7,000 initial payment to the temple and that payment for the sum of RM100 was made by second defendant's brother Hooconan s/o Murugaya ('SD2') as the first instalment payment to that effect as evident from the official receipt issued by the secretary of the temple.

[35] The second defendant contended that the second time the second defendant's indicated his intention to rescind the contract was some time in or about 2001 when the second defendant had negotiated for a replacement land from the temple for Plot 43 which the temple did not accept as indicated in the temple's letter dated 20 December 2001. Relevant part of the said letter read as follows:

> Berhubung dengan permintaan yang dibuat oleh perumahan 43-tanah untuk tanah-harus dikaji secara luas sebelum buat keputusan mengenainya ...
>
> Bagi perkara hal hartanah ini tuntuan tanah untuk tanah atau mohon gantirugi adalah seumpama satu penipuan pada Tuhan.
>
> Semata-mata kerana hakmilik hartanah tersebut sudah dipindahmilik keatas nama kamu, tidak elok kamu mempunyai apa-apa pemikiran/niat yang bertentangan dengan jaminan yang diberikan oleh ibubapa kamu kepada Devasthanam berkenaan hartanah ini ...

[36] The second defendant's defence was heavily disputed by the plaintiff and in disputing such claim, the plaintiff had submitted that as soon as an agreement comes into existence for the sale of land, the vendor becomes in equity, the trustee for the purchaser of the land subject to the vendor's right to the purchase money; where the purchaser enters into possession of the land, and builds upon it, he becomes the equitable owner of the land, and it only remains to clothe the equitable estate with a legal title. So long as he is in possession of the land, he does not lose his rights simply by not proceeding at once for specific performance. Hence it is the plaintiff's submission that limitation of period and/or doctrine of laches and/or delay does not bar the plaintiff's claim for the legal title.

[37] In support of its contention, the plaintiff had referred this court to a long line of authorities. This court finds it sufficient to refer to the case of *Munah v Fatimah* [1968] 1 MLJ 54; [1967] 1 LNS 108, where Raja Azlan Shah J (as His Majesty then was) had this to say:

> The legal position is that there is an ordinary contract for the sale of land which is not subject to the consideration inherent in commercial contracts. Relying on the contract the plaintiff went into occupation and did such acts as were necessary and relevant to show that she was in possession. She never got off the land. As from that

time, it seems to me, that she was the equitable owner of the said land. What is required now is to clothe the equitable estate with a legal title. She therefore seeks the aid of this court. In my opinion she is well entitled to the relief she claims. The law with regard to an agreement to sell land under an expectancy of title is discussed in my judgment in *Kersah La'usin v Sikin Menan* and I do not think I can profitably add to what I have there said.

[38] Further down the same page of the same judgment, on the issue of limitation, Raja Azlan Shah J (as His Majesty then was) stated as follows:

> There is the other point raised by counsel on behalf of the absent defendant, that is, that the action is time barred. Without going into unnecessary detail it is sufficient for me to say that the case of *Williams v Greatrex* [1957] 1 WLR 31, to which reference was made in *Kersah*'s case, is against the defendant. It was there said that *where a plaintiff is in possession of an equitable estate under a contract substantially executed, so that the object of his action is to clothe himself with the legal estate, time will not run at all as this is not that species of laches which will prevail against the equitable title*. (Emphasis added.)

[39] In *Williams v Greatrex* [1956] 3 All ER 705, the Court of Appeal held that the purchaser was entitled to specific performance of the contract notwithstanding the ten years' delay because: (i) the time for completion specified in the contract was not of the essence of the contract; (ii) the purchaser was not barred by laches since he had an equitable title to Plots 3 and 4 by virtue of the contract and the fact that he had entered into possession of them; and (iii) there had not been an abandonment of the contract by the purchaser. Denning LJ approached the issue in this way, as seen at pp 708–709 of the report:

> But then it is said: when the vendor repudiated this contract, surely the purchaser ought to have taken him to court; he ought to have brought an action for specific performance then and there to compel him to perform his contract. I confess that argument did appeal to me at one time in the course of the case. A very long time elapsed without his taking the vendor to court. But I think the answer to it is this: Once the purchaser went into possession of the land, having the contractual right to be there, he had not only an equity to be there. He had more. He had the benefit of a contract to sell him these two plots. That was not only an equity: it was an equitable interest in the land. He was in a sense the equitable owner of the land. So long as he was in possession of the land, he did not lose his rights simply by not proceeding at once for specific performance.

[40] Returning to the facts of the present case before me, there was no dispute between parties that an agreement had been reached between the temple and Marimuthu for the sale and purchase of Plot 43 at an agreed purchase price of RM15,000 and that an initial payment of RM7,000 had been made by the temple to Marimuthu. Subsequently the temple had since 1980

entered into possession of Plot 43 and had to date remained in possession of the said plot.

[41] The issue in contention as advanced by the second defendant was that the temple had breached the agreement in failing to fulfil the agreed considerations under the agreement which had led to rescission of the agreement by the second defendant and/or his family.

[42] Relying on the authorities alluded above, in determining whether the plaintiff's claim is barred by limitation and/or whether the doctrine of laches applies to bar the plaintiff's claim before me, it is imperative, in my considered view, to firstly address my mind to the issue of whether there had been a breach of the agreement by the temple.

WHETHER THERE WAS A BREACH OF THE SALE AND PURCHASE AGREEMENT

[43] In the absence of a written contract as in this case, the role of this court is fundamentally to determine whether the evidence adduced is sufficient to establish the existence of a binding agreement between both parties in that the parties are no longer in the negotiation stage but have in fact concluded a binding agreement. Whether a binding contract exists is essentially a question of facts; see *Lau Sieng Nguong v Hap Shing Co Ltd* [1969] 1 MLJ 190; [1969] 1 LNS 80 (FC).

[44] Based on the facts of the present case, it is common ground that there existed an agreement between parties for the sale and purchase of Plot 43. Issues however arose with regard to the considerations of the sale and purchase agreement. The temple and Marimuthu were under an understanding that there were two considerations to be satisfied by the temple, the first one being the payment of purchase price of RM15,000 and the second consideration was for the temple to secure one unit of flat from the first defendant's development project for the purchase of Marimuthu without balloting as evident from the minutes of the temple meeting dated 8 December 1979.

[45] The plaintiff claimed to have fulfilled the two considerations in view of the following facts:

(a) that the temple had made an initial payment for the sum of RM7,000 to Marimuthu which was not disputed by the second defendant;

(b) that out of the balance sum RM8,000 payable by the temple, Marimuthu had instructed that RM5,001 be donated to the temple and a further sum

of RM102 was payable for poojas conducted at the temple by M Gobala Krishnan thus making a total of RM5,102, leaving a balance of RM2,898;

(c) that the temple had negotiated with the first defendant and had secured the unit of flat for purchase by Marimuthu without balloting, the temple had entered into an agreement with the first defendant dated 25 July 1980 to that effect ('memorandum of agreement'); and

(d) that following a written request by the first defendant via letter dated 15 March 1988, the temple had made further payment for the sum of RM1,611 to the first defendant in respect of Plot 43 for the balance payment of the said plot as evident from the letter dated 19 August 1989, thus leaving a balance sum of RM1,287 as due and payable to Marimuthu, but she had died on 26 June 1982 and no claim was ever received by the temple from personal representatives of her estate.

[46] The second defendant had disputed the plaintiff's claim that Marimuthu had instructed RM5,001 from the balance payment be donated to the temple and that RM102 from the balance payment had been paid for poojas conducted at the temple. The second defendant had also denied any knowledge with regard to payment of RM1,611 made by the temple to the first defendant.

[47] It was also the second defendant's allegation that the temple had failed to secure the said unit of flat for purchase by Marimuthu without having to go through the ballot process as evidenced from the letter dated 2 July 1980 issued by UDA to Marimuthu. Relevant excerpt of the said letter reproduced for ease of reference as follows:

> Merujuk kepada permohonan tuan/puan No Pendaftaran 130/79/SG untuk membeli satu yunit kedai/rumah pangsa dalam projek di atas, sukacita dimaklumkan bahawa dalam cabutan undi yang telah dijalankan pada 20hb jun 1980, tuan/puan telah Berjaya untuk membeli yunit kedai/rumahpangsa No 4–6 di tingkat bawah satu/ dua/tiga/empat.
>
> Dengan itu kami bagi pihak Syarikat Bekerjasama Serbaguna Sungai Gelugor Dengan Tanggungan Berhad ingin menawarkan kepada tuan/puan yunit tersebut dengan harga $22,500 (Ringgit: Dua puluh dua ribu lima ratus sahaja.) ...

[48] In order to determine whether there has been a breach of the agreement by the temple as alleged by the second defendant, this court shall now proceed to determine whether or not the temple had fulfilled its obligation under the agreement by securing the unit of flat to be purchased by Marimuthu without balloting as agreed. It is important for me to note here that it was the second defendant's pleaded stance that the balance purchase price of RM8,000 for Plot 43 is to be paid by the temple after a transfer of the said plot in the name

of the temple had been effected and after the temple had successfully obtain a unit of flat to be purchased by Marimuthu from the first defendant.

[49] Based on the minutes of the temple meeting dated 26 April 1980 the temple had demonstrated its effort in negotiating with the first defendant. And as evident from the minutes of temple meeting dated 21 June 1980, the first defendant had agreed to offer a unit of flat to be purchased by Marimuthu. The relevant minutes of meetings reproduced for ease of reference as follows:

> CATITAN MINIT PADA 26–4–1980
>
> ... Oleh yang demikian dengan puashati kami telah berusaha untuk mendapatkan sebuah rumah untuk beliau dari syarikat Jawatankuasa juga diberitahu harga rumah RM22,500 yang perlu dibayar oleh Puan Marimuthu.
>
> CATITAN MINIT PADA 21–6–1980
>
> ... syarikat kerjasama serbaguna telah bersetuju dengan permintaan kita untuk menawarkan kediaman rumah Pangsa bagi Lot 43 dan 44 yang dibina oleh mereka dan bagi tujuan tersebut kita dijemput oleh syarikat untuk menandatangani perjanjian.

[50] The above was further evident from the extract of the ordinary committee meeting of the temple held on 21 June 1980 dated 30 June 1980 as follows:

> Whilst answering a question raised, the Chairman informed the House that Madam Marimuthu d/o murugaya, I/C No 1337836 will be responsible for payment of one unit at $22,500.00 ...

[51] The above terms received fortification in the memorandum of agreement entered into between the temple and the first defendant. According to the minutes of the temple meeting dated 25 October 1980, a meeting was held on 23 October 1980 between the temple, the first defendant and Marimuthu together with her two sons where purpose of the said meeting was to affirm that the unit of flat obtained by Marimuthu was obtained without balloting and that the unit of flat was allocated by the first defendant to Marimuthu upon the temple's request.

[52] It was contended by the second defendant that the said flat was obtained as a result of an application dated 28 November 1979 made by Marimuthu for the purchase of a flat in the first defendant's development project and not the flat which had been negotiated by the temple with the first defendant.

[53] The principal fact or *factum probandum* may be proved indirectly by means of certain inferences drawn from *factum probans* ie the evidentiary facts.

To put it differently, circumstantial evidence is not direct to the point in issue, but consists of evidence of various other facts which are so closely associated with the fact in issue that taken together, they form a chain of circumstances from which the existence of the principal act can be legally inferred or presumed *(Woodroffe and Amir Ali Vol 2 at p 2236)*. Application of the balance of probabilities comes down to whether it is more likely than not that an event had taken place (see *In re S-B (Children) (Care Proceedings: Standard of Proof)* [2010] 1 AC 678; *Davies v Taylor* [1974] AC 207).

[54] Bearing in mind the principles as alluded above and in view of the overwhelming evidences adduced before me particularly the minutes of the temple meetings prior to the issuance of the letter dated 2 July 1980 by UDA. The evidences adduced, in my view, gave strength to the plaintiff's case that the temple had negotiated with the first defendant and that the unit of flat No 4–6 was in fact the unit which had been successfully negotiated and secured by the temple to be offered for purchase by Marimuthu as expressly stated in the memorandum of agreement. It is also important to observe that the said offer was made by UDA on behalf of the first defendant and UDA merely issued a letter to confirm the success of the second defendant in obtaining the offer to purchase the said unit.

[55] For the foregoing reasons, I therefore cannot agree with the second defendant's contention that the plaintiff had breached the sale and purchase agreement. It is in my considered view that the plaintiff had fulfilled its obligation under the agreement and is entitled to the transfer of title of Plot 43. The plaintiff is not required to make the payment of balance purchase price of RM8,000 until the title to the said plot had been transferred to the temple which was not the case here.

[56] The legal position is that once a purchaser had paid the purchase price, he became the beneficial owner of the property while the vendor holds the legal title to the property as bare trustee for the plaintiff. I find authority in the often quoted case of *Lysaght v Edwards* (1876) 2 Ch D 499 where Jessel MR made the following observation:

> ... the effect of a contract for sale has been settled for more than two centuries; certainly it was completely settled before the time of Lord Hardwicke, who speaks of the settled doctrine of the court as to it. What is that doctrine? It is that the moment you have a valid contract for sale the vendor becomes in equity a trustee for the purchaser of the estate sold, and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase-money, a charge or lien on the estate for the security of that purchase-money, and a right to retain possession of the estate until the purchase-money is paid, in the absence of express contract as to the time of delivering possession.

[57] This 'bare trustee' was approved by the Federal Court in the case of *Temenggong Securities Ltd & Anor v Registrar of Titles, Johore & Ors* [1974] 2 MLJ 45; [1974] 1 LNS 175 where Ong Hock Shim FJ held as follows:

> The law is clear that the vendors, after receipt of the purchase price and surrender of possession of the said land to the appellants are bare trustees for the appellants of the said land and it must consequently follow, as night must day, that the vendors have no interest in the lands that can be the subject matter of a caveat.

[58] Returning to the facts of the present case, I am satisfied that there was a valid and binding agreement between the temple and Marimuthu. On top of the RM7,000 which was paid by the temple to Marimuthu as the initial payment for the sale and purchase of Plot 43.

[59] The temple had since 1980 entered into possession of Plot 43 and had to date remained so without any opposition from the second defendant and/or his family. The temple was issued with a partial occupation certificate on 7 July 1984 and had on 3 September 1999 received the occupation certificate from Majlis Perbandaran Pulau Pinang.

[60] Evidence were further adduced before this court whereby the first defendant being the registered owner of Plot 43 had written several correspondences to the temple, acknowledging the temple as the purchaser and/or beneficial owner of Plot 43 and had requested the temple to settle the balance purchase price of Plot 43 towards the first defendant. The temple had in compliance to the said request made a further payment of RM1,611 in respect of Plot 43 as evident from the letter dated 19 August 1989.

[61] In view of the chain of circumstances of the present case and guided by the above authorities, it is in my considered view that the temple having fulfilled its obligation under the agreement and having remained in possession of Plot 43 under the agreement which entitled it to be there, the temple is therefore the equitable owner of the said plot under the agreement binding on the vendor ie Marimuthu and/or her family. Having said that, the court is therefore of the view that the second defendant cannot now come to court and object the plaintiff's claim for the title to be transferred to the plaintiff unless he could show that he had not acquiesced in the temple's act of possession or that the purchaser had abandoned the agreement.

WHETHER THE SALE AND PURCHASE AGREEMENT HAD BEEN RESCINDED BY THE DEFENDANT

[62] The plaintiff, in disputing the second defendant's claim that the sale and purchase agreement had been rescinded, had submitted that the payment of RM100 was not a repayment consequent to the rescission but was in fact a

repayment of the RM7,000 made by SD2 as the second defendant's father was dissatisfied with the temple referring Plot 43 as having been 'sold' rather than 'donated' to the temple as intended by Marimuthu and/or her family members. The said incident as claimed by the plaintiff was put into writing in a letter dated 4 January 2000 issued by the temple to second defendant's family.

[63] Having thoroughly scrutinised all evidence adduced before me, it is in my considered view that second defendant's intention to rescind the agreement runs contrary to his evidence at trial where second defendant had expressed his non-intention to recover Plot 43 and/or to evict the temple from the said plot as follows:

PD2: The question was clearly asked if your mother did anything, did you do anything. Did you or your family ever intend to evict or to remove the temple from the plot?

SD3: Tidak

PD2: Do you have the intention today?

SD3: Tidak ada niat sebegitu sehingga kini, YA.

[64] The receipt issued by the Temple for the sum of RM100 received from the second defendant's brother was remarked as 'sebagai derma' which lends credit to the plaintiff's contention that RM100 was paid as donation. There was nothing to suggest that the said payment was made for the purpose of repayment consequent to rescission as claimed by the second defendant.

[65] The evidence before this court shows sufficient acquiescence by the second defendant and/or his family. Since 1980 until to date, the second defendant and/or his family had not object to the temple's possession and/or occupation of Plot 43 and had allowed the development and construction on the said plot. There were no steps taken, nor were there even the intention on the part of the second defendant and/or his family to evict the temple from the said plot.

[66] The first defendant, having title registered under its name, holds Plot 43 as bare trustee for Marimuthu and/or her family. Having ruled that the temple is the equitable owner of Plot 43 as a result of the agreement between the temple and Marimuthu, it would in effect means that the first defendant now holds Plot 43 as bare trustee for the temple. In such a case, the purchaser being the temple in this case is entitled to the transfer of title in its name on payment of the balance purchase price for Plot 43. What was left to be done in this case is to clothe the equitable estate with a legal title. Accordingly, the second defendant cannot rely on neither the defence of limitation and/or the defence of laches or delay as in such instance, time does not begin to run at all.

Reiterating the words of Raja Azlan Shah J (as His Majesty then was), 'this is not that species of laches which will prevail against equitable title'.

[67] In view of my decisions above, the second defendant therefore becomes in equity, the trustee for the plaintiff of the Plot 43 subject to the second defendant's right to the purchase money entitled. Based on the facts and circumstances of the present case and the evidence adduced before this court, I am satisfied on the balance of probabilities that the temple had made the initial payment of RM7,000 and RM1,611 towards the sale and purchase of Plot 43.

[68] Based on the legal principles as established in the above cited authorities, I am of the considered view that even in the absence of counterclaim, the second defendant is still entitled to the outstanding balance purchase price owed by the temple. The plaintiff is duty bound to fulfil its obligation under the sale and purchase agreement.

[69] The plaintiff claimed that RM5,001 was deducted from the balance purchase price for the purpose of donation to the temple as instructed by Marimuthu and that a sum of RM102 was further deducted for payment of poojas conducted for the second defendant's family member at the temple and that such information was recorded in a memo as adduced before this court.

[70] The memo was a handwritten memo prepared by SP1 without any sort of acknowledgment by Marimuthu and/or her family to acknowledge the same. There was no evidence to show any acknowledgement and/or confirmation by Marimuthu and/or her family in respect of the donation and the pooja payment. Evidences adduced before this court were insufficient to prove that Marimuthu and/or her family had made any such donation and/or pooja payment to the temple out of the balance purchase monies.

[71] Failure by Marimuthu, during her lifetime, and/or her family to request for the balance purchase price does not dispense with the plaintiff's duty to perform its obligation under the sale and purchase agreement. Based on the foregoing reasons, it is thus in my considered view that the second defendant is entitled to the balance purchase money amounting to RM6,389 to be paid by the plaintiff to the second defendant.

CONCLUSION

[72] In coming to a decision, this court has carefully weighed both the oral and documentary evidence adduced by all parties, scrutinised all the documents tendered and relied upon by the parties and considered the written submissions as well as the authorities filed by them. It is my considered view that the plaintiff had proven its pleaded case on a balance of probabilities

against the defendants and turning to the reliefs sought by the plaintiff, and consonant with the judgment above, the plaintiffs are granted judgment on the following terms:

(a) I declare that the Devasthanam (the temple) is the purchaser of Geran No 26724, Lot No 6045 (Plot 43), Mukim 13, Daerah Timur Laut, Pulau Pinang and that its trustees are entitled to be registered as the legal owners of the said lot;

(b) I declare that the Devasthanam (the temple) is the purchaser of Geran No 26725, Lot No 6044 (Plot 44), Mukim 13, Daerah Timur Laut, Pulau Pinang and that its trustees are entitled to be registered as the legal owners of the said lot;

(c) I order that the second defendant deliver the Issue Document of Title 26724, Lot No 6045 (Plot 43), Mukim 13, Daerah Timur Laut, Pulau Pinang to the plaintiff within seven days from the date of receipt of the balance purchase-money for the sum of RM6,389 to be paid by the plaintiff to the second defendant;

(d) in the alternative, if the Issue Document of Title Grant No 26724, Lot No 6045 Mukim 13, Daerah Timur Laut, Pulau Pinang is still in possession of the first defendant, I order that the first defendant do deliver the title to the plaintiff within seven days from the date of receipt of proof of payment of the balance purchase-money for the sum of RM6,839 to the second defendant by the plaintiff;

(e) I order that the first defendant do execute the memorandum of transfer in Form 14A of the National Land Code and all other relevant and necessary documents for the transfer and registration in the names of the trustees of the Devasthanam of Geran 26724, Lot No 6045 (Plot 43), Mukim 13, Daerah Timur Laut, Pulau Pinang and Geran No 26725, Lot No 6044 (Plot 44), Mukim 13, Daerah Timur Laut, Pulau Pinang within fourteen days from the date of receipt of the said documents from the plaintiff's solicitors and return the duly executed documents within the said period of fourteen days to the plaintiff's solicitors;

(f) in the event, the first defendant fail, neglect and/or refuse to execute the said documents to effect the transfer and registration of Lots 6044 and 6045 in the names of the trustees of the Devasthanam, the Timbalan Pendaftar or the Penolong Kanan Pendaftar of the High Court, Penang be granted full authority to execute the relevant documents for and on behalf of the first defendant; and

(g) lastly it is ordered that each party bear their own costs.

Order accordingly.

Reported by Afiq Mohamad Noor